

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION-RIVERSIDE

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HONORABLE VIRGINIA A. PHILLIPS, JUDGE PRESIDING

- - -

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. EDCR 12-92 (B) VAP
)
SOHIEL OMAR KABIR,) Trial Day 1
RALPH KENNETH DELEON,)
)
)
Defendants.)
)

REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Riverside, California

Wednesday, August 13, 2014

2:43 p.m.

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Federal Official Court Reporter
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1 WEDNESDAY, AUGUST 15, 2014; RIVERSIDE, CALIFORNIA

2 -o0o-

3 (In the presence of the jury:)

4 THE COURT: Ms. DeWitt, you may proceed.

5 MS. DEWITT: Thank you, Your Honor.

02:43

6 On November 16th, 2012, defendant DeLeon, Miguel
7 Santana, and Arifeen Gojali packed their bags, they got into a
8 car in Chino, California, and they left, intent on traveling
9 overseas, out of the United States, to engage in violent jihad.

10 Their goal was also to join defendant Kabir who, at
11 that time, was in Afghanistan. But they were stopped. They
12 were stopped shortly after they left, by the FBI, and arrested.

02:43

13 You're going to see that aerial footage of that
14 arrest during this trial.

15 You're going to also hear that defendant Kabir was
16 arrested shortly thereafter, in Afghanistan, and brought back
17 to the United States by the FBI in order to stand trial here
18 today.

02:44

19 Now, ladies and gentlemen, although the word "jihad"
20 has many different interpretations to different people, the
21 evidence in this case is going to show that in their own words,
22 when the defendants used that word, they meant "engaging in
23 armed conflict against non-believers," including Americans who
24 they believed were oppressing Muslims in Muslim land.

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25 You're going to hear a lot of different names, but

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1 the key names that you're going to hear and I want to
2 familiarize you with is, of course, the two defendants, Kabir
3 and DeLeon. But you're also going to hear considerable
4 evidence about their co-conspirators, Miguel Santana and
5 Arifeen Gojali. And these are two individuals that were in the
6 car that day when they were arrested attempting to leave the
7 United States in order to travel overseas.

02:45

8 As the Court has already advised you, there are five
9 counts in this case that charge conspiracy. And what I would
10 ask you to do, as you listen to the evidence, is to just keep
11 in mind that what is being charged here is a conspiracy. And
12 as the judge has advised you, and she will advise you again in
13 more detail in her instructions, that's simply an agreement to
14 commit a crime. And as the Court has already advised you, that
15 is, in and of itself, illegal.

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02:46

16 The evidence in support of these charges is going to
17 fall basically into four different areas. The first is
18 evidence of communications about the plan to engage in violent
19 jihad. You're going to hear the defendants in their own words
20 talk about their desire to engage in fighting on the frontline,
21 to act as snipers, to use explosives.

02:46

22 You're going to hear them in their own words talk
23 about their willingness to kill in the name of Allah. And
24 you're going to hear them talk about in their own words their
25 efforts to join Al-Qa'ida and the Taliban.

02:46

1 You're going to hear them acknowledge that the people
2 that they would be fighting against are U.S., British, UN, and
3 Israeli soldiers and troops.

4 You're finally going to hear their willingness, in
5 their own words, to engage in suicide missions and other acts
6 of violence resulting in death.

02:47

7 The second area of evidence that you're going to
8 hear, the second type of evidence, is their acts of preparation
9 in furtherance of these conspiracies, including engaging in
10 physical training to prepare themselves, including for the
11 terrain that they might face in Afghanistan, and the weight
12 that they would need to carry during combat.

02:47

13 You're going to hear about them going to shooting
14 ranges so that they can get practice and experience shooting
15 assault-style rifles that they might expect to use overseas in
16 combat.

02:47

17 And you're going to hear about them going to
18 paintball facilities to simulate the battle conditions that
19 they might encounter overseas.

20 The third area of evidence that you're going to hear
21 about during the course of this trial is their efforts to
22 execute the plan to travel overseas to engage in violent jihad.
23 And that's going to include, among other things, defendants
24 DeLeon and Santana getting passports so that they could travel
25 overseas. It's going to include defendant DeLeon helping

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1 Gojali get an expedited passport. And I'm going to tell you a
2 little bit more about that later, but they had to make up a
3 fake story to justify him getting a passport quickly so that he
4 could join the group, and Mr. DeLeon was the one who helped him
5 do that.

02:48

6 You're going to hear about defendant DeLeon raising
7 money to fund the trip by doing a couple things. First, by
8 withdrawing his college tuition money to fund the trip, also by
9 selling his car to raise money to fund the trip. And as you're
10 going to hear, he used that money to book tickets for the group
11 to travel overseas.

02:48

12 You're also going to hear that defendant DeLeon was
13 the person who arranged for a ride to Mexico that day on the
14 first leg of their trip out of the United States.

15 The fourth area of evidence that you're going to hear
16 about involves defendant Kabir's action simultaneously in
17 coordinating with the defendant and co-conspirators who were in
18 the United States. In his own words, he talked about how he
19 was working to make connections for them to terrorist groups.
20 He advised defendant DeLeon and the U.S.-based co-conspirators
21 about details for travel, routes to take, things that they
22 needed to do. And he helped prepare them -- prepare a place
23 for them to stay once they got there, as he told them, *I have a*
24 *pad set up for you*, and he also told them, *I have people here*
25 *who will meet you upon your arrival.*

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02:49

1 During the course of the trial, ladies and gentlemen,
2 you're going to hear about different types of evidence that
3 help support the charges in this case. And those include,
4 among other things, physical items of evidence, many of which
5 were seized pursuant to search warrants executed during the
6 course of this investigation. And just to give you some
7 examples of the types of evidence that you will see that help
8 support and prove the charges hear, you will see luggage, the
9 luggage that they took with them that day, or tried to take
10 with them that day when they traveled overseas. Military
11 uniforms, documents, including bank records and receipts, and
12 plane tickets.

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13 You're going to see computers that were seized.
14 You're going to see cell phones that were seized. You're going
15 to see other digital items like iPads and thumb drives. And
16 you're going to get to hear about the types of material that
17 they had on those devices, including an extensive collection of
18 radical material, Anwar al-Awlaki lectures, and other things of
19 extremist nature.

02:50

20 You're also going to see extensive written
21 communication between the defendants, defendant Kabir and
22 defendant DeLeon and the co-conspirators, including emails
23 between them, *Facebook* posts and messages, and text messages.

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24 You're also going to hear, ladies and gentlemen,
25 extensive recordings of the defendants' conversations in their

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1 own words. So you're going to hear what they said and how they
2 interpreted things and what they were doing.

3 You're also going to see video recordings and
4 photographs showing the co-conspirators in acts of preparation
5 and executing their plan to travel overseas, including shooting 02:51
6 ranges, engaging in paintball activities, and going to the
7 passport offices. You're going to actually see video and
8 photographs of them doing these things which, ladies and
9 gentlemen, are themselves overt acts in furtherance of these
10 conspiracies. 02:51

11 You're also going to see extensive evidence of
12 radical and extremist material that was both collected by these
13 individuals but also shared by these individuals. And you're
14 going to hear during the course of the trial that they not only
15 shared and collected these things, but they would play them 02:51
16 when they were in each other's company so that they could share
17 the beliefs and they could share the information that was
18 contained in those lectures.

19 You're going to hear that in addition to that they
20 shared radical and extremist material through their *Facebook* 02:52
21 and through other means of Internet communication, including
22 links to videos and lectures about martyrdom operations, links
23 to videos about making IEDs and bomb making. And in
24 particular, extensive sharing of information about Anwar
25 al-Awlaki and Usama Bin Laden, and not only sharing that 02:52

1 material but also sharing links and other material related to
2 those individuals.

3 And you're going to hear, ladies and gentlemen, that
4 Anwar al-Awlaki and Usama Bin Laden were two individuals that
5 defendant Kabir and defendant DeLeon idolized and looked up to.
6 And there are two individuals, in particular, Anwar al-Awlaki,
7 whose beliefs they adopted as their own.

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8 Now, when defendant DeLeon and Mr. Santana and Gojali
9 got into the car that morning, their plan was to drive down to
10 Mexico, and then from Mexico fly overseas. And the reason that
11 they did that, ladies and gentlemen, is because they wanted to
12 avoid having to go into a U.S. airport and face U.S. potential
13 security by going through a U.S. airport.

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14 You're going to hear during the course of this trial
15 that the defendants and the co-conspirators were extremely
16 security conscious and they wanted to avoid law enforcement
17 detection. And one of the ways that they did that was through
18 the extensive use of code words. I'm going to talk a little
19 bit later about the different code words that they used. But
20 they did that in order to have people who were listening to
21 them, or might be listening to them, not know what they were
22 talking about.

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02:53

23 You're also going to hear that on this particular
24 trip that they took that day they talked about how important it
25 would be for them to wear western-style clothing, so as to not

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1 draw attention to themselves. And they talked about taking
2 things in their luggage that might throw off the authorities if
3 someone were to search their luggage. And an example of that
4 was to take Xboxes with them. And as you're going to see, when
5 they left that day, they in fact had Xboxes in their luggage.

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6 Now, that day Mr. DeLeon, defendant DeLeon, had
7 booked the group tickets from Mexico to Turkey, and Turkey was
8 going to be their transit -- their transit point along the way.

9 As the evidence will show, it's not that easy to get
10 into Afghanistan. But they had -- they had an advantage. They
11 had something extra. They had a man on the ground. They had
12 defendant Kabir who was in Afghanistan at that time. So they
13 had somebody there who could help them to get into Afghanistan.

02:54

14 As the evidence will show, in the days, weeks, and
15 months leading up to that day that they tried to leave the
16 United States to travel overseas, that they were in regular
17 contact with defendant Kabir. They talked to him over the
18 Internet via Skype -- and for those of you who are not familiar
19 with Skype, it's a way of sort of making a phone call or video
20 call, a video conference, but through the Internet. And they
21 were in regular contact with him both through Skype, through
22 emails, and through *Facebook* messages and through *Facebook*
23 posts.

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24 You're going to hear that during this time period and
25 in the efforts leading up to that November 16th attempt to

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1 depart for overseas, that they had a number of conversations
2 with him, including during which defendant Kabir told them
3 about his connections that he had made in Afghanistan. You'll
4 hear that the defendant talked to them and gave them advise on
5 routes to take and not to take. He encouraged the group, in 02:56
6 fact, to travel earlier because they had originally talked
7 about traveling in December, and he encouraged them to come
8 earlier.

9 He also told them how to prepare and train, including
10 doing squats to build up their leg strength for the terrain 02:56
11 that they would be facing.

12 He talked to them about getting visas and passports.
13 He encouraged defendant DeLeon to sell his car, which, as
14 you've heard, he did.

15 He arranged for a place for them to stay when they 02:56
16 arrived.

17 And finally, he told them, in this month leading up
18 to their departure, that he might be going on a one-way or
19 suicide mission, but not to worry, that he would arrange to
20 have someone meet them if he did not return. 02:56

21 During the weeks leading up to -- the weeks and days
22 leading up to the day of their departure, they also had
23 extensive discussions amongst the group about cover stories
24 that they would use to get into Afghanistan. And they wanted
25 to use a cover story to sort of throw off the authorities and 02:57

1 not attract attention as to why these four people were -- who
2 sort of seemed like an odd group -- were traveling into
3 Afghanistan. So they made up a story about being cologne
4 salesmen in an import/export business. They rejected that.
5 And then they talked about pretending that they would be 02:57
6 enrolling in a school in Afghanistan. And they ultimately
7 decided to go with a cover story that involved pretending that
8 they were going to a wedding. And you're going to hear there
9 was a lot of conversations between the group of them about
10 possibly getting notarized wedding invitations or other 02:57
11 documentation to show that they were going into Afghanistan for
12 some legitimate reason other than to go over and fight in
13 furtherance of jihad.

14 You're also going to hear, ladies and gentlemen,
15 during the course of this trial that the word "wedding" had 02:58
16 another meaning besides being a cover story for their travel
17 into Afghanistan. It's a word that is also used as code to
18 mean *traveling to engage in violent jihad*. And in fact, the
19 day before they left there was a conversation between defendant
20 DeLeon and Mr. Gojali in which he explained to him that code 02:58
21 word "wedding" and what it meant, and he told him about a
22 conversation that he had just had with somebody that he had
23 sought advice from about their travels overseas to engage in
24 violent jihad.

25 You're going to hear, ladies and gentlemen, that in 02:58

1 addition to those things defendant Kabir had a very specific
2 idea about how he could contribute to the plan, aside from
3 helping them with the logistics on the ground.

4 Shortly before they left, he called Mr. DeLeon. He
5 called defendant DeLeon, and he asked defendant DeLeon to bring
6 with him to Afghanistan his military uniforms. 02:59

7 Now, you're going to hear during the course of this
8 trial that earlier, in early 2000, Mr. Kabir had been a member
9 of the Air Force. Mr. Kabir called defendant DeLeon and he
10 asked him to bring his uniforms. He said, *Go talk to my* 02:59
11 *brother, go to my parents' house in Pomona*, because that's
12 where he had left his uniforms when he had left the country.

13 Now, defendant DeLeon decided against taking his
14 uniforms with him and didn't want to have any additional
15 scrutiny because of having military uniforms in his luggage. 03:00
16 But what you're going to hear, ladies and gentlemen, is that
17 the very same day that defendant DeLeon was arrested, the FBI
18 executed search warrants at defendant Kabir's family's home and
19 they found those military uniforms. They found those military
20 uniforms exactly where defendant Kabir said they would be. 03:00

21 As you've heard, ladies and gentlemen, although
22 defendant DeLeon and the co-conspirators did not have the final
23 steps in their itinerary worked out, they had a plane ticket to
24 Turkey. They didn't have the steps from Turkey to their next
25 step worked out at that time, they nevertheless decided that 03:00

1 they would press forward. They decided to get in that car and
2 to begin their travel overseas. They didn't care that they
3 didn't have that final leg in their journey worked out. They
4 wanted to go. They were ready to go. And they got in the car
5 and tried to go.

03:01

6 The evidence will show, ladies and gentlemen, that in
7 addition to believing that engaging in violent jihad and dying
8 in the name of Allah would get them heavenly rewards, the
9 defendants adopted a belief system that said even trying to do
10 so would get you heavenly rewards. Taking steps in that
11 direction would get you heavenly rewards. And as the evidence
12 will show in this case, defendant Kabir and defendant DeLeon
13 took many, many, many steps towards violent jihad.

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14 And that is, in fact, what this trial is about. It's
15 about how these two defendants and their co-conspirators came
16 to be on that path to violent jihad, how they came to decide
17 that they needed and had an obligation to fight overseas, and
18 how they decided that they wanted to join Al-Qa'ida and the
19 Taliban.

03:01

20 Ladies and gentlemen, during the course of this trial
21 you're going to hear about a number of different leaders and
22 groups, and these are individuals that the defendants and the
23 co-conspirators were particularly interested in and were
24 interested in and believed in and followed.

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25 The first is Al-Qa'ida, or as the defendants would

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1 refer to them sometimes AQ, by the abbreviated initials, and
2 Usama Bin Laden. As the Court just instructed you, Al-Qa'ida
3 is designated officially as a foreign terrorist organization by
4 the Secretary of State. It's an organization that was
5 established by Usama bin Laden. And Al-Qa'ida is, as many of
6 you may know, the terrorist organization that claimed
7 responsibility for the attacks in the United States on 9/11.

03:02

8 Another group that you're going to hear about is the
9 Taliban. The Taliban is a hardline group in Afghanistan that
10 has fought for power there since the 1900s -- the 1990s, excuse
11 me -- and allied itself with Al-Qa'ida and, in fact, provided
12 Al-Qa'ida with a safe haven in Afghanistan prior to the 9/11
13 attacks.

03:03

14 You're also going to hear about an individual by the
15 name of Anwar al-Awlaki.

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16 Anwar al-Awlaki is a prominent Al-Qa'ida figure.
17 Anwar al-Awlaki was extremely influential in radicalizing
18 individuals in extremist views of Islam. And he did this by
19 publishing, extensively, lectures and videos and other material
20 over the Internet, and in English. So his material was
21 particularly accessible to people who only spoke English. And
22 his extremist views, in particular, were that violent jihad
23 against Americans was a binding obligation of Muslims.

03:03

24 And you're going to hear, ladies and gentlemen, that
25 the defendants in this case and the co-conspirators collected,

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1 extensively, material by Anwar al-Awlaki, and they shared that
2 material amongst each other. And importantly, they adopted the
3 views and the values of Anwar al-Awlaki.

4 And finally, most importantly, they attempted to put
5 those views into action. And that's what -- that's what
6 they're charged with here, is adopting those views and
7 attempting to put them into action.

03:04

8 You're going to hear that defendant DeLeon, in
9 particular, had a lot of the Anwar al-Awlaki and other radical
10 extremist material. He would actually take it with him. He
11 had it on thumb drives. He had it on his iPhone, saved and
12 downloaded onto his iPhone. And he had many of these materials
13 downloaded on his laptop computer, a Sony Vaio, you're going to
14 hear more about during the course of this trial.

03:05

15 I mentioned to you earlier about the word "jihad."
16 And again, this is a word that has different interpretations
17 for different people.

03:05

18 You're going to hear about the defendants using the
19 word, "fisabilillah or "jihad fisabilillah." And again, in their
20 own words they adopted a definition of these words, meaning to
21 engage in armed conflict, to engage in violent jihad.

03:05

22 You're also going to hear that they used the word
23 "mujahideen" or "mujahid," which roughly refers to holy
24 warriors engaging in fighting.

25 And finally, they used in their discussion an

03:06

1 important concept to them, which was "shaheed," which means to
2 die as a martyr.

3 Now, the FBI first learned about co-conspirator
4 Santana's interest in violent jihad by seeing his public
5 postings on a social media site called *Tumblr*.

03:06

6 Now, when they first saw these postings on this
7 *Tumblr* site -- and this didn't require anything other than to
8 look at a publicly available posting -- they didn't know that
9 much about Santana. They didn't know who he was associating
10 with, and they didn't know the full scope of his activities, so
11 they employed a confidential source. And you're going to hear
12 a lot about the confidential source during the course of this
13 trial, so let me tell you a little bit about him.

03:06

14 He was a Muslim. He first met defendant DeLeon at a
15 mosque, and he's an individual who had worked for the FBI
16 before this investigation. And he worked on a number of cases,
17 and he got paid. He got paid for his work that he did for the
18 FBI.

03:07

19 You're also going to hear that he had a prior
20 conviction for trafficking in pseudoephedrine. And for those
21 of you who aren't familiar with that, that's one of the
22 ingredients that you use to make methamphetamine.

03:07

23 During the course of the investigation, defendant
24 DeLeon and his co-conspirators made friends with the
25 confidential source. And the confidential source, during these

03:07

1 interactions, would record their conversations. And you're
2 going to be able to hear those conversations. And because he
3 made those recordings, you're going to be able to hear what
4 they said and what they believed in their own words. And you
5 can decide and you can assess those statements.

03:08

6 During the course of the investigation, you're going
7 to also hear about a very important conversation that happened
8 in May of 2012.

9 In 2012, this is when defendant DeLeon first told the
10 confidential source about the plan that the defendants and the
11 co-conspirators had to travel overseas and engage in violent
12 jihad.

03:08

13 So in May of 2012, for the first time defendant
14 DeLeon tells the confidential source about a plan that they had
15 already made, a plan that preexisted him ever meeting the
16 confidential source. And he told the confidential source that
17 -- in fact, this was the first time he had really told anybody
18 else about the plan, and he invited the confidential source to
19 join the plan. So the confidential source, as you'll hear,
20 pretended to join the group. He went along with them on their
21 activities. And by doing so -- in fact, he was even in the car
22 the day that they were arrested. He was in the car when they
23 tried to leave to go overseas.

03:08

03:09

24 By doing so, by befriending the defendants and the
25 co-conspirators, the FBI was able to monitor and know and see

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1 what they were doing in real time and be able to basically
2 track their actions and keep an eye on them.

3 The evidence is also going to show, ladies and
4 gentlemen, that the confidential source did another really
5 important thing, and that is, not one, but on two different 03:09
6 occasions he asked defendant DeLeon if defendant DeLeon
7 wouldn't be interested in doing the other kind of jihad, the
8 other kind of jihad, jihad being, as he made clear to
9 Mr. DeLeon, would be having a wife, raising kids, getting a
10 job, being a good Muslim. And Mr. DeLeon -- defendant DeLeon's 03:10
11 response to that, on two different occasions when he was
12 specifically asked whether or not he would accept that
13 alternative view of jihad, was to say, *No, that's not what I'm*
14 *interested in. That's not the form of jihad that I'm*
15 *interested in. That's not the kind of jihad that's going to* 03:10
16 *get me heavenly rewards or get me into paradise.*

17 I'm going to run through with you a few of the key
18 events and acts of preparation that happened over the course of
19 the charges that are now pending before you.

20 In 2010 -- this is an important date -- Mr. Kabir met 03:10
21 DeLeon and Santana in a hookah bar. And in that time period of
22 2010, he converted them to Islam and, significantly, he
23 converted them to a very violent Islamic view of Islam. It's a
24 violent doctrine that included the views of Anwar al-Awlaki.
25 He introduced them to Anwar al-Awlaki. He introduced them to 03:11

1 his belief system. And as the evidence shows, they adopted
2 those views, and that is the time when they first formed their
3 plan to travel overseas to engage in violent jihad.

4 In January of 2012, you're going to hear that
5 co-conspirator Santana, when he was traveling back from Mexico 03:11
6 back into the United States, got stopped at the border by
7 border protection officers. And when he came into the United
8 States, he had had in his possession a copy of a magazine
9 called *Inspire*. And you're going to hear that *Inspire* magazine
10 is a jihadi propaganda magazine that's designed to do two 03:12
11 things: One, inspire people to engage in violent jihad, but
12 also to give them information about how to do so.

13 In the first edition of *Inspire* that was ever
14 published, they had an article called, *How to Make a Bomb in*
15 *the Kitchen of Your Mom*. And articles like that that were 03:12
16 included in *Inspire* magazine.

17 In May of 2012, as I mentioned, this is the very
18 first time that the confidential source learns about the fact
19 that defendant Kabir, Santana, and defendant DeLeon have a
20 preexisting plan to travel overseas and engage in jihad. 03:12

21 You're going to hear that after that, in July of
22 2012, Miguel Santana makes a point to go and renew his passport
23 so that he can in fact travel overseas.

24 On August 31st, 2012, you're going to hear that there
25 was a very, very important conversation that happened that day. 03:13

1 It was a Skype conversation between defendant DeLeon -- excuse
2 me -- defendant Kabir calling to defendant DeLeon and the
3 co-conspirators in the United States. And during that
4 important Skype call, defendant Kabir tells DeLeon and Santana,
5 *Everything is good to go if you guys come out here.*

03:13

6 And he, at that time, keep in mind, is in
7 Afghanistan.

8 He tells them that he's about to go out to do some
9 physical training. And he tells the group that he has made
10 connections with the students, and that they will then advance
11 to the professors. And during this conversation -- and you're
12 going to hear this conversation, the recording of this
13 conversation -- Santana and DeLeon explain that the "students"
14 means the "Taliban," and that the "professors" mean
15 "Al-Qa'ida."

03:13

03:14

16 And again, these are just other examples of code
17 words that these individuals used, that the co-conspirators
18 used to throw off law enforcement detection.

19 And during the course of this conversation,
20 essentially what they're saying is they're going to go over and
21 meet these "connections," which is the Taliban, and if things
22 go well with the Taliban, they advance to the "professors,"
23 which is Al-Qa'ida.

03:14

24 Defendant Kabir tells defendant DeLeon and Santana
25 during the Skype call that he has told the brothers about them

03:14

1 and that they had said, *Bring them down*.

2 In addition to those code words in the course of this
3 particular conversation, they also talk about orphans, that
4 they need to fund the orphans and work with the orphans. As
5 they explained during the course of this conversation, the word 03:14
6 "orphans" meant mujahideen or mujahideen fighters.

7 Next area that you're going to hear about is the
8 online communications between the defendants.

9 Now, at this time, even though defendant Kabir had
10 traveled ahead of the group and had gone to Afghanistan before 03:15
11 them, he, nevertheless, stayed in very close communications
12 with the other defendants and co-conspirators -- the other
13 defendant and co-conspirators. And you're going to hear
14 evidence about this very close interconnectedness that the four
15 of them had. And it's evidenced by the email communications 03:15
16 between them, the *Facebook* postings that they shared with each
17 other and "liked" and sent to each other. And you're going to
18 hear that in addition to just communicating online between each
19 other, like sending messages, text messages and substantive
20 messages to each other, they also shared extremist media that 03:16
21 was important to them and significant to them. And a couple of
22 examples of those would include martyrdom operation -- links to
23 martyrdom operations, to videos about IED attacks, videos about
24 suicide bombings, videos and links -- videos about mujahideen
25 fighters, and a variety of material espousing violent jihad. 03:16

1 And most particularly, as I mentioned before, material that
2 featured Anwar al-Awlaki and his views.

3 And one thing that's important about these
4 communications is that it included all of the co-conspirators.
5 It included defendant Kabir, defendant DeLeon, and
6 co-conspirator Santana. It did not include the confidential
7 source. The confidential source never communicated with these
8 individuals over the Internet.

03:16

9 Now, after this August 31st communication that I
10 mentioned to you where they first learned that defendant Kabir
11 has found connections in Afghanistan -- the students and the
12 professors -- you're going to hear that that's when their
13 activities really ramped up. They accelerated all of their
14 activities, their acts of preparation, and their efforts to
15 execute the plan.

03:17

03:17

16 In September, defendant DeLeon made four different
17 trips to firing ranges: September 10th, September 20th,
18 September 21st, September 30th. And on a number of those
19 occasions -- in all of those occasions, co-conspirator Santana
20 went with him, and on one occasion Mr. Gojali went with him.
21 And you're going to hear that defendant DeLeon researched --
22 researched which firing ranges to go to because he wanted to go
23 to a firing range where they could fire and practice with
24 assault-style weapons, not just handguns. He wanted to go some
25 place where they could shoot AK-47s and other assault-style

03:17

03:18

1 weapons.

2 You're also going to hear that he and Mr. Santana
3 talked about reading materials about training, training to
4 engage in combat, including, for example, how to -- you know,
5 what stances to take. And they read about this in, among other 03:18
6 things, *Inspire* magazine.

7 That month that, that busy month of September 2012,
8 you're going to hear that they also made two trips to the SC
9 Village Paintball facility on September 16th and 23rd -- and
10 that's defendant DeLeon. 03:19

11 And if you go back one, they also, during this time
12 period, joined a gym and went running and hiking to increase
13 their physical fitness in order to get themselves ready to
14 prepare for combat.

15 In September, they also -- this is also when 03:19
16 defendant DeLeon got a refund check of his college tuition.
17 And this is a photocopy of the canceled check for his tuition.

18 And finally, at the end of September a very
19 significant and important event happened. And that is, that
20 defendant DeLeon recruited a new member to the group. That's 03:19
21 when co-conspirator Gojali first joined the group, was at the
22 end of September.

23 In October, defendant DeLeon lists his car for sale.
24 And as you can see on this *Craigslist* ad, he puts in the ad,
25 *I'm getting rid of it because I'm leaving the country ASAP.* 03:20

1 *Need money fast.*

2 In early November, defendant DeLeon picked up his
3 Philippine passport so that he would be ready and able to
4 travel overseas.

5 You're going to hear that on November 13th he helped
6 defendant Gojali. Keep in mind he just joins the group. He
7 helped him also to get a passport. But they needed to get his
8 passport quickly, so this is what defendant DeLeon did:

9 First of all, he booked him a ticket to travel
10 overseas so that he could go to the passport office and show
11 them that he had a need to travel; he had a ticket and it was
12 urgent to get his passport. He went with Mr. Gojali to the
13 passport office and actually helped him apply for the passport.
14 And when he was going to the passport office with
15 co-conspirator Gojali, he actually coached him on a fake story
16 to tell them so that they could justify getting the passport
17 expedited. And the fake story that they finally came up with
18 was that Mr. Gojali needed to fly over to a funeral for the
19 death of his grandfather.

20 And you're going to hear that defendant DeLeon even
21 went into the passport office with him and paid for his
22 passport.

23 And this, ladies and gentlemen, is a picture of
24 Gojali picking up his passport the very next day, his expedited
25 passport. And this is him after he has picked up his passport,

1 rather proudly holding it up to show the group, to show his
2 co-conspirators who were waiting for him in the parking lot
3 straight ahead of where he's facing, *Hey, it worked. I got my*
4 *passport.*

5 You're going to hear that in November defendant
6 DeLeon finally was able to sell his car. And you may hear that
7 it took him a lot of effort to do that and he had to, in fact,
8 even lower the price several thousands dollars. But he was
9 desperate to sell the car so that he would have money to fund
10 the trip.

11 And you're going to hear that on November 15th
12 defendant DeLeon booked tickets for the group to travel from
13 Mexico to Turkey.

14 You're also going to hear, ladies and gentlemen, that
15 when they booked the trip to Turkey, defendant Kabir was a
16 little bit concerned about the fact that they were going to
17 Turkey and said, *Why are you going there? Why are you wasting*
18 *time?*

19 He didn't understand why they were stopping there.

20 And defendant DeLeon got a little upset about the
21 fact that, you know, of course, *You were the one that suggested*
22 *that as a way to go, why was he upset?*

23 So they had a conversation about it, a heated
24 conversation about it. And defendant Kabir, after that
25 conversation -- during that conversation, reassured him,

1 basically said, *Calm down. You guys are stressing. And by the*
2 *way, before you leave, check the weather in Turkey because it's*
3 *pretty cold. You need to make sure you pack appropriately for*
4 *the weather there.*

5 And as you've heard, ladies and gentlemen, even 03:23
6 though they didn't have that final leg of the trip worked out,
7 they were intent on going. They wanted to go. And so they got
8 into the car and they left. They attempted to leave the United
9 States to travel overseas.

10 Finally, ladies and gentlemen, as I mentioned, there 03:23
11 are a number of conversations that were recorded during the
12 course of this investigation. And you heard me refer to a
13 couple of them already, but I want to refer to a few more that
14 you will hear during the course of the trial. And these are
15 conversations where you will hear again the defendants in their 03:23
16 own words.

17 In one conversation, defendant DeLeon talked about
18 that the only way that they will be victorious is by the sword.

19 In one conversation, Santana talks about a
20 conversation that he had with defendant Kabir where defendant 03:24
21 Kabir tells him that the military are the true terrorists, and
22 he encourages Santana to join the other side, the righteous
23 cause on the other side, the worthy cause.

24 You're going to hear multiple conversations by the
25 conspirators where they talk about joining Al-Qa'ida, joining 03:24

1 the Taliban, among other groups. You're going to hear
2 conversations by defendant DeLeon and Santana acknowledging
3 that when they're in Afghanistan they're going to be fighting
4 against U.S., UN, British, and Israeli troops.

5 In one recorded conversation, you're going to hear 03:24
6 defendant DeLeon and Santana be asked if they would have any
7 trouble killing people on the battlefield. And in response to
8 that, Santana says, *No, if it's for Allah. No.*

9 And DeLeon says, *I feel like Miguel. I will snipe*
10 *the guy off. I am so ready. The least I can do is blow his* 03:25
11 *brains out.*

12 In another conversation, defendant DeLeon and Santana
13 are asked what role they want to have when they go overseas to
14 fight in combat. And defendant DeLeon says, *Frontline first.*

15 That's his first choice, is to be on the frontline. 03:25
16 And his second choice is C-4, which you're going to hear,
17 ladies and gentlemen, refers to the use of plastic explosives.

18 Santana's response to what roles he wants to take is,
19 he wants to be a sniper first. His second choice would be to
20 be on the frontline. And his third choice would be artillery. 03:25

21 In an October Skype call, that's a call from
22 defendant Kabir to the conspirators here in the United States,
23 he tells, in particular in this particular one, Santana, that
24 he's working on making additional connections and that he has
25 met a person with connects to Al-Qa'ida in Pakistan. And so he 03:26

1 throws that out to the group as, *In addition to the people I*
2 *have here in Afghanistan, there is these other connections that*
3 *I've made to Al-Qa'ida in Pakistan.*

4 In October, you're going to hear a conversation that
5 defendant DeLeon is involved in, in an apartment where he's
6 having a fairly lengthy and sort of heated discussion about the
7 justifications for suicide killing. And he concludes by
8 saying, *My intent is to give my life for Allah.*

9 Finally, in November, on November 6th, you're going
10 to hear a recorded conversation that I alluded to earlier, in
11 which defendant Kabir tells DeLeon he's going on a mission and
12 it's a mission that involves explosives, and that he may not
13 return. And in response to this, defendant DeLeon's reaction
14 is, *Wow, I'm down for that.*

15 Defendant Kabir tells him that he's made plans for
16 someone to meet them and not to worry in case he doesn't come
17 back; there will be somebody there to greet them.

18 As the evidence will show, ladies and gentlemen, the
19 defendants put these words into action. They put these words
20 into action the day they got into that car and attempted to
21 travel overseas. They put these words into action with every
22 act of preparation, with every act of trying to execute this
23 plan. And their plan here was their mutual agreement to engage
24 in violent jihad. And that mutual agreement is what forms the
25 basis for the charges in this case.

1 And, ladies and gentlemen, at the conclusion of the
2 trial we're going to ask you to return the only true verdict,
3 the only verdict supported by the evidence, and that's guilty
4 of all five counts.

5 Thank you.

03:28

6 THE COURT: Thank you. All right.

7 Ladies and gentlemen, we'll take a recess before you
8 hear argument from other counsel. Remember, don't discuss the
9 case. Don't make up your minds or form any opinions. Don't do
10 any research.

03:28

11 Thank you. You're excused for 15 minutes.

12 (Recess)

13 (Out the presence of the jury:)

14 THE COURT: Mr. Thomas.

15 MR. THOMAS: Yes. Thank you, Your Honor.

03:47

16 THE COURT: We're going to bring the jury down and
17 line them up, but I guess you have something brief to --

18 MR. THOMAS: Really quick, Your Honor.

19 Normally, I'm at that table and I'm used to the
20 audio/video there, but they wired another cord for me here. I
21 wanted to be able to do opening from here, if you don't mind,
22 so I can run my --

03:47

23 THE COURT: Oh, certainly, but Ms. Viramontes is
24 going to go next.

25 MR. THOMAS: Right. And then we'll just hit a switch

03:48

1 and then I'll do mine.

2 (In the presence of the jury:)

3 THE COURT: Let the record reflect the presence of
4 all members of the jury, all counsel, and the defendants
5 present.

03:50

6 Ms. Viramontes, you may proceed.

7 MS. VIRAMONTES: Thank you, Your Honor.

8 Good afternoon. Mr. Kabir had two paths in front of
9 him. One was the path to terrorism, as the Government just
10 argued, and the other path was the path to crazy. And that's
11 the path that he felt.

03:50

12 Over the next couple of weeks the evidence will show
13 that Mr. Kabir was immature, he was low functioning, and he was
14 lost.

15 This case doesn't begin in 2002 -- 2010. I'm sorry.
16 This case begins over 30 years ago when Mr. Kabir's father, who
17 was a colonel in the Afghan Army, refused to join the communist
18 when they invaded Afghan. Because his father refused because
19 of his political beliefs, the family sought asylum in the
20 United States of America. Mr. Kabir moved to this country when
21 he was just two years old.

03:50

03:51

22 Mr. Kabir's family immigrated to the Inland Empire.
23 He grew up eating pizza. He grew up playing Xbox. He grew up
24 playing video games. He was never a good student. And when he
25 finished high school, he decided to go on to junior college,

03:51

1 but that wasn't really working out for him.

2 At 22 years old, Mr. Kabir decided to enlist in the
3 Air Force. He hoped the Air Force would give him direction.
4 He hoped the Air Force would help him pay for school. His
5 father, who he looked up to, had also been a colonel in the 03:52
6 Afghan Army for ten years. Mr. Kabir loved serving in the Air
7 Force. But less than a year in his service, Mr. Kabir was in a
8 car accident and he developed painful headaches. And then he
9 had his first seizure. He had a grand mal seizure where he
10 violently shook, and he lost consciousness. He had another 03:52
11 seizure. Air Force doctors diagnosed him with epilepsy.

12 Doctors put him on seizure medication; the medication
13 didn't stop the seizures. Mr. Kabir wanted to stay in the Air
14 Force, but about six months later the Air Force determined that
15 he could no longer serve because of the seizures. He received 03:53
16 an honorable discharge with disability pay at ten percent.

17 Mr. Kabir had health problems after the seizures
18 started. He had to move home. And his friends and family will
19 tell you that he was tired, that he was weak, that he had a
20 hard time remembering things. With the seizures, he would 03:53
21 violently shake and lose consciousness, and often he would hit
22 his head.

23 Mr. Kabir, one day, was out driving and he had a
24 seizure while he was driving. His car smashed into a telephone
25 pole and he had to be airlifted to a hospital. After that, the 03:53

1 DMV took away his driver's license.

2 Mr. Kabir's mother, his father, his brothers, and his
3 sister-in-law all tried to help him. He had to live at home
4 with them. He had to work for his brothers in their office
5 because he couldn't function in the workplace.

03:54

6 His sister-in-law, Rosa Maldonado, who will testify
7 in this trial, will tell you that Mr. Kabir would throw away
8 important documents, that he would leave cash from customers
9 out on his desk in plain sight.

10 And you'll hear from Mr. Kabir's friends and family
11 that Mr. Kabir got interested in some whacky, crazy talk. He
12 was into UFOs. He was into anti-vaccination campaigns. He was
13 into conspiracy theories about masons. And he'd like to say
14 shocking and controversial things. There is no doubt about
15 that. And he would put shocking and controversial and
16 offensive things on his *Facebook* page, and he liked the
17 attention he got for it.

03:54

03:55

18 He also started to smoke a lot of marijuana. And
19 marijuana helped him feel better, and he felt like it was
20 helping to control the seizures. He started to spend a lot of
21 time smoking marijuana at a hookah bar, which you're going to
22 hear a lot about in this case. It's called the Velvet Room.
23 It's across the street from Ontario Mills, in Ontario. And
24 Mr. Kabir is kind of drifting through life, smoking marijuana,
25 eating pizza, watching the Lakers at the hookah bar.

03:55

03:55

1 At this hookah bar is where Mr. Kabir meets
2 Mr. Santana and Mr. DeLeon for the first time. The three of
3 them happened to be there at the same time. They'll smoke some
4 marijuana, then they'll have a great time talking about
5 religion and conspiracy theories.

03:56

6 Mr. Kabir's family decides that they want him to live
7 the life of a 29-year-old man. They pressure him to get
8 married. He gets married. The marriage only lasted a couple
9 of months.

10 When Mr. Kabir is 33 years old, his family decides
11 that he should go live in Germany. They have family who lives
12 in Germany, and it will be a new start for him. Mr. Kabir's
13 relatives can help look after him because he's not able to live
14 by himself because of the seizures. And in Germany, Mr. Kabir
15 won't need to drive like he does in the Inland Empire. Maybe
16 he'll even find a wife.

03:56

03:56

17 Mr. Kabir doesn't tell Mr. Santana, Mr. DeLeon, or
18 Mr. Gojali that he's going to Germany. They find out he's in
19 Germany after he's already there.

20 Mr. Kabir's mother, who you'll hear from in this
21 case, she buys him a plane ticket; she buys herself a plane
22 ticket. And she'll tell you she didn't think he could handle
23 buying plane tickets on his own. She then flies with him to
24 Germany because she'll tell you she didn't think he could fly
25 there by himself.

03:57

03:57

1 And over the next couple of months, Mr. Kabir lives
2 with different family members in Germany, but he always lives
3 with relatives. He never lives by himself.

4 You'll hear from Mr. Kabir's aunt, Waheeda Maher, who
5 lives in Germany, and she will tell you that Mr. Kabir wanted
6 to stay in Germany. He tried to learn German. He took
7 language classes. He walked long distances in the cold, in
8 sandals, to get to his German class. She'll tell you she's the
9 one that had to buy him warm shoes because he didn't have any.

10 Mr. Kabir discussed the requirements to live in Germany with
11 his aunt and with his uncle, and they tried to advise him about
12 what to do.

13 Mr. Kabir, when he was in Germany, got this
14 certificate doing an online program so he could teach English.
15 He wanted to stay in Germany. And Mr. Kabir's aunt tried to
16 help him find work because he wasn't able to do it on his own.

17 Mr. Kabir, though, he had visa problems. His visa
18 was about to expire. You'll hear from the lawyer in Germany,
19 that Mr. Kabir talked to, and that lawyer advised Mr. Kabir
20 about what he needed to do to legally stay in Germany.

21 Mr. Kabir's family also knew that he wanted to stay
22 in Germany. His big brother will tell you that he didn't think
23 Mr. Kabir could solve his visa problems on his own, so his big
24 brother flew from Pomona all the way to Germany to help his
25 little brother with his visa problem.

1 Mr. Kabir and his big brother thought if Mr. Kabir
2 went to Switzerland that his visa would reset when he came back
3 to Germany and he would have another six months in Germany.
4 Well, the information they got wasn't correct. When Mr. Kabir
5 and his brother came back from Switzerland to Germany, they
6 found out Mr. Kabir didn't have a new visa and that his visa
7 was going to shortly expire.

03:59

8 Mr. Kabir didn't want to go back to the United
9 States. He liked the independence that he had living in
10 Germany. He also had another problem, that he was running out
11 of money. Germany is not a cheap place to live, and he's not
12 working, and his family can't continue to support him.

03:59

13 Unknown -- unknown to Mr. Kabir or Mr. DeLeon, while
14 Mr. Kabir is in Germany, the FBI sent a confidential informant
15 into the mosque that Mr. Santana and Mr. DeLeon and Mr. Gojali
16 are attending, to investigate Mr. Santana, not Mr. Kabir.

04:00

17 You'll hear from Mr. Santana in this case. He's a
18 cooperating witness. He's going to testify for the Government,
19 and he's going to get a benefit for testifying for the
20 Government.

04:00

21 Mr. Santana admitted to the FBI that he lied.
22 Mr. Santana made up things. And Mr. Santana, who is 21 years
23 old at the time, admitted to the FBI that he exaggerated to
24 impress his friends.

25 The FBI begins investigating Mr. Santana because

04:01

1 Mr. Santana had, one, been chatting with an undercover FBI
2 agent online, saying some pretty radical things. There's no
3 denying that.

4 And, two, he got stopped at the border when he was
5 coming back from Mexico. His grandmother had taken him to 04:01
6 Mexico so he could have some dental work done. And he got
7 stopped when he was coming back from going there with his
8 grandma. And when got stopped, they found an Al-Qa'ida
9 magazine and some other radical literature. Mr. Kabir was
10 already in Germany when Mr. Santana got stopped at the border 04:01
11 of Mexico.

12 You're going to learn about the confidential
13 informant in this case. He's a convicted felon. He has a drug
14 trafficking offense involving methamphetamine. He's not a
15 small street-level dealer. He went to federal prison, and he 04:02
16 got time off his sentence for cooperating with the FBI.

17 You're also going to learn that the confidential
18 informant received immigration benefits. He's working for the
19 FBI, so the FBI asks that he stay in the country, even though
20 under our immigration laws he's deportable because of his drug 04:02
21 trafficking conviction.

22 You're going to learn that the FBI has paid him over
23 a quarter of a million dollars for his work.

24 The evidence will show that while Mr. Kabir is in
25 Germany the confidential informant brings together Mr. Santana, 04:02

1 Mr. DeLeon, and Mr. Gojali. They are three men who are in
2 their early 20s who all have family problems, who are all
3 unemployed or underemployed, and are directionless.

4 You'll see that these three men didn't even know that
5 Mr. Kabir was going to Germany until after he left. And when 04:03
6 he's in Germany, they're not talking every day. They're not
7 communicating regularly.

8 You'll also see that the confidential informant is
9 the first one to start using the coded words. In late
10 August 2012, when Mr. Kabir is in another country, that's when 04:03
11 the code words start. You'll see that the confidential
12 informant nominates Mr. DeLeon to be the leader of the group.
13 This is happening when Mr. Kabir is in another country, in
14 another continent, in another time zone.

15 You will also hear evidence that the confidential 04:03
16 informant, Mr. DeLeon, Mr. Santana, and Mr. Gojali were
17 together day in and day out, these three young men who have
18 been to the confidential informant's apartment.

19 The confidential informant takes them out to eat. He
20 drives them around. He offers to pay for their expenses. 04:04

21 Mr. Kabir was nowhere near this. He's in another
22 country.

23 You also see that the confidential informant is much
24 older than these men. He's in his 40s. These young men are in
25 their 20s. He has a lot more money than them. They're all 04:04

1 unemployed and underemployed, and he knows much more about
2 Islam as a native Palestinian.

3 You'll see that the original plan was for Mr. DeLeon,
4 Mr. Santana, and the confidential informant to go to Egypt
5 where they're going to go through underground tunnels to get 04:04
6 into Palestine. The confidential informant told these young
7 men that he knew how to get into Palestine through these
8 tunnels.

9 Mr. Kabir was not part of this plan.

10 What you'll see is Mr. Kabir, Mr. DeLeon, 04:05
11 Mr. Santana, Mr. Gojali, are on separate tracks. Mr. Kabir is
12 in Germany and in Afghanistan playing with his cousin's little
13 kids. And Mr. DeLeon, Mr. Santana, and Mr. Gojali are with the
14 confidential informant.

15 Going back to Mr. Kabir. When things don't work out 04:05
16 in Germany, Mr. Kabir and his family decide that he should go
17 to Afghanistan, which is this little red blob right over there.
18 They are of Afghani descent. And because of their ties to this
19 country, they feel that it is now safe enough for Mr. Kabir to
20 go there. Mr. Kabir's disability checks will cover expenses 04:06
21 each month. And Mr. Kabir's aunt, one of his father's little
22 sisters, is a nurse, and she can help watch over Mr. Kabir with
23 his epilepsy. Mr. Kabir can study religion, look into opening
24 a small business, maybe even find a wife.

25 You'll see that Mr. Santana, Mr. Gojali, and 04:06

1 Mr. DeLeon didn't even know Mr. Kabir was going to Afghanistan.
2 When Mr. Santana found out that Mr. Kabir was in Afghanistan,
3 he said, *I don't think Mr. Kabir -- or I should say Sohiel --*
4 *is going to stay in Afghanistan.*

5 He thought he's going to go back to Germany. 04:06

6 When Mr. Kabir leaves and goes to Afghanistan and he
7 arrives in Kabul, it's not what he expected. He's having a
8 hard time communicating with people. He speaks little Dari,
9 which is one of the languages they speak in Afghanistan. In
10 fact, his Dari is so bad they put him in the children's group 04:07
11 in the mosque where he's studying.

12 He doesn't understand the culture. He's been here
13 since he was two. He's an American, and he doesn't make any
14 friends.

15 He spends most of his time on the street. This is 04:07
16 the street that his aunt's house is on, and this is the street
17 that the mosque is on. And he spends a lot of time behind that
18 yellow gate right there, playing volleyball with his cousin's
19 little kids.

20 Mr. Kabir cannot manage his money. This is the first 04:07
21 time in his life he has had to manage his money on his own. He
22 gives money to the orphans begging on the street. Gives money
23 to his aunt and uncle. There is eight people living in that
24 house. He also buys candy for his cousin's little kids. At
25 times, he runs out of money and he doesn't even have enough 04:08

1 money to buy food for himself. You'll hear his cousin tell you
2 that he went hungry. And you'll hear his cousin tell you he
3 didn't have enough money to buy a plane ticket home.

4 So Mr. Kabir asks his friends to send him money for
5 orphans, but he lies and keeps the money for himself.

04:08

6 He tells his friends to bring him his old military
7 uniforms. He does this so he can sell them. You're going to
8 hear testimony that there are small shops in Afghanistan that
9 sell American goods, like the shop Bush Bazaar that is named
10 after our president, George W. Bush. Military pants can sell
11 for \$35 there. That's a lot of money in Afghanistan.

04:08

12 Mr. Kabir is lonely. When his friends start emailing
13 and chatting with him online, telling him they want to come to
14 Afghanistan, Mr. Kabir encourages them to come. They tell him
15 they want to do jihad. And Mr. Kabir, who has a history of
16 smoking marijuana with these guys and making a bunch of crazy
17 talk, starts telling them, *Oh, I have connects.*

04:09

18 But he never gives them actual contact information.

19 He tells them, *They told me you can come join us.*

20 But he never tells them who "they" are.

04:09

21 He tells them, *Everything is all set up out here.*

22 But there is no details like who, what, when, where.
23 He tells them he's going on a suicide mission but doesn't go
24 because he gets sick.

25 He tells them, *Bring an Xbox. It's boring here.*

04:10

1 The evidence in this case is going to show that
2 Mr. Kabir never had any connects with terrorists. He never
3 even talked to any.

4 You will also hear from Mr. Kabir's family. They're
5 going to tell you that the family does not support the Taliban. 04:10
6 Mr. Kabir lived in a neighborhood that was known to be anti-
7 Taliban. One of Mr. Kabir's cousins worked as an interpreter
8 for U.S. forces, and the Taliban kidnapped and beheaded one of
9 Mr. Kabir's cousins. This was a big event in Afghanistan that
10 led to widespread protest and even an HBO documentary about it. 04:10

11 You will also hear from one of Mr. Kabir's cousins
12 that Mr. Kabir was not going to stay in Afghanistan. He was
13 going to Turkey with his aunt and his uncle's family. Shortly
14 before their arrest in this case, Mr. Kabir's aunt and uncle
15 sold their land in Afghanistan, they applied for visas, and had 04:11
16 their passports. Mr. Kabir's aunt and Mr. Kabir's parents
17 decided Mr. Kabir was going to go with them.

18 When it's decided that Mr. Kabir was going to go to
19 Turkey with his family, he starts to tell his friends not to
20 come to Afghanistan. He's not truthful. He doesn't say, *I* 04:11
21 *lied. I don't have any connections*, but he starts telling them
22 about all the difficulties they'll face. And he tells them not
23 once, not twice, but many times, *Don't Come*.

24 You will hear conversations in this case leading up
25 to arrests with the confidential informant, with Mr. Santana, 04:12

1 with Mr. DeLeon, and with Mr. Gojali where they debate where
2 they should go. They talk about going to Dubai. They talk
3 about going to Syria. They talk about going to Egypt. They
4 talk about going to Saudi Arabia, Palestine, Turkey, Germany.
5 At one point they have a conversation where they say, *We should*
6 *go to England so we can see a soccer game.*

04:12

7 The night before the arrests in this case Mr. DeLeon
8 tells Mr. Santana, *I don't think Sohial wants to go with the*
9 *group.*

10 You'll see pieces of evidence in this case too.
11 You'll see that when the young men in California were arrested
12 they had an Xbox and a Raiders controller, FIFA, a soccer game,
13 Tiger Woods golf. They're concerned about what's going to
14 happen to their Xbox and their video games when they get
15 arrested.

04:12

04:13

16 You will also see that they didn't have any foreign
17 currency. They didn't have any traveler's checks. They didn't
18 have hotel reservations, or flights anywhere from Turkey.

19 You will also see the letters that Mr. DeLeon wrote
20 to his daddy and his mommy. Nowhere in these letters does
21 Mr. DeLeon say he's going off to fight jihad. Nowhere in these
22 letters does he say he's never coming back.

04:13

23 You'll also hear testimony that on November 16th, the
24 day the three men get arrested in California, Mr. Kabir's
25 mother calls him and says, *The FBI just raided our house. What*

04:13

1 *is going on?*

2 And Mr. Kabir goes nowhere.

3 On November 17th, forces go to Mr. Kabir's aunt's
4 house in Kabul and they arrest him, and Mr. Kabir is there
5 baby-sitting his aunt's kids.

04:14

6 When Mr. Kabir was arrested, he didn't have any maps
7 of military bases, no list of servicemen, no military uniforms,
8 no pictures of federal buildings, no pictures of U.S.
9 landmarks, no guns, no ammunition, no explosives, no
10 instructions from terrorists, and no terrorists' phone numbers.

04:14

11 Mr. Kabir went down the path of crazy talk. He never
12 even opened the gate to terrorism.

13 Thank you.

14 THE COURT: Thank you.

15 Mr. Thomas, you may proceed.

04:14

16 MR. THOMAS: Thank you, Your Honor.

17 Ladies and gentlemen, this is not a case about
18 terrorist acts. It's about talk. You're not going to hear
19 evidence of anyone being killed, no bombs went off, no one got
20 shot, no one got hurt. All you'll hear is talk. And this
21 wasn't just everyday normal conversation-type talk. This was
22 talk that was initiated, encouraged, and recorded by the
23 Government's paid informant. And my co-counsel was generous
24 when she said a quarter of a million dollars. It was \$356,000
25 by the last word I checked. That's how much they paid the

04:15

04:15

1 Government informant to give them information. And you'll hear
2 about how that information was given and how the money came,
3 and how the more information they gave, the more money he got.
4 That's the kind of evidence you're going to hear in this case.

5 Where was Mr. DeLeon before the informant got
6 involved? Cal State San Bernardino. He was a senior in 2012.
7 He had started there a few years ahead of time. He was
8 studying nursing. He switched his degree at one point to focus
9 on business marketing.

10 And what kind of things did he do in college? Well,
11 he did what a lot of guys his age do in college. They chase
12 girls and they go to parties, and they sit around with their
13 friends and they play video games.

14 And in fact, that's what he did the majority of the
15 time with Mr. Kabir. They sat around.

16 When he wasn't in the mosque praying and he wasn't in
17 school studying, he was sitting with Mr. Kabir, smoking pot and
18 playing video games on their Xbox, soccer games, other kinds of
19 games. And it's important that you realize that because this
20 is the mindset of these guys. I mean, they might -- I can't
21 call them kids because they weren't under 18, but they were
22 kids at heart, and they were playing games.

23 And as Ms. Viramontes told you, their main concern
24 going overseas was their games. Everything to them was a game.
25 This whole case to them was a game.

1 I don't know about you guys, but this is the first
2 day of school for a lot of people, including my kids, and it
3 couldn't come soon enough because I couldn't get them out of
4 the house all summer. All they wanted to do is play Xbox or
5 watch *YouTube* or play on the computer. And the kind of games 04:17
6 the kids watch these days are not the kind of games I played.
7 It's not *Pac-Man* and *Donkey Kong* and *Galaxa* and these fantasy
8 things, it's *Halo* and *Modern Warfare* and shooting games,
9 realistic shooting games. So that when I walk in the room and
10 I look at the TV where my kids are playing, I don't know if 04:17
11 they're watching TV or playing a game. This stuff looks real.
12 And this is what my client and Mr. Kabir spent most of their
13 time doing, was playing games.

14 Now, when you're talking and you're smoking pot and
15 you're playing games, and you're a new Muslim convert, and you 04:18
16 have all of these ideas about what it is to be a Muslim --

17 THE COURT: Mr. Thomas, refrain from argument.

18 MR. THOMAS: Certainly. Certainly.

19 When you have all these ideas about what is to be a
20 Muslim, there is a lot of things that go through your head. So 04:18
21 what you're going to hear in the evidence is the talk that went
22 on. The talk that went on at the Velvet Room, which my
23 co-counsel put on the board. And there's the inside of the
24 Velvet Room, kind of dimly lit. They would smoke pot. They
25 would talk about religion. They would talk about world events. 04:18

1 What you're going to hear, ladies and gentlemen, is
2 how naïve they are. None of them spoke the language. None of
3 them had been to the Middle East. None of them knew anyone in
4 the Middle East. None of them knew any terrorists. There were
5 no connections to terrorists, as my co-counsel explained.
6 There was nothing. All of this case is about talk. That's
7 what you're going to hear. The Government is going to play
8 hour after hour of recording of talk.

04:19

9 And it's important that you understand --

10 THE COURT: Okay. No more argument, Mr. Thomas.
11 You're arguing.

04:19

12 MR. THOMAS: Certainly.

13 It's important that you understand what you're not
14 going to hear at trial. The lack of evidence you're going to
15 hear about an agreement, and my co-counsel planted the seed for
16 you.

04:19

17 Mr. Kabir's in Germany, completely unknown to
18 Mr. DeLeon.

19 Mr. Santana is being targeted by the FBI, completely
20 unknown to Mr. DeLeon.

04:19

21 The Government talks -- they talked in their opening
22 statement about everyone as a group and everyone as a
23 defendant. They had their own friends. They had their own
24 circle of friends. You're going to hear about how little they
25 had in common, except for their conversations with the

04:20

1 Government informant.

2 One of the important things that I also want you to
3 understand is where Mr. DeLeon was in his life. And you're
4 going to hear evidence from his family and from his family
5 members about where Mr. DeLeon was in his life and how he was 04:20
6 raised. He was raised Catholic, very Catholic. He went to a
7 private expensive Catholic school, K through 12, was baptized
8 at a very early age. He didn't know much about Catholicism
9 other than he spent his whole life doing it, all right. He
10 didn't make the choice because in Catholicism you're baptized 04:21
11 at a very young age. It's not like Judaism where you're 13 and
12 you get bar mitzvah'd. You make this decision early on in
13 life.

14 So what happened to Mr. DeLeon when he got to
15 college, and you'll hear this from his family, is that normal 04:21
16 college time of challenging conventions and challenging notions
17 that you're used to, and meeting people that are different, he
18 was fascinated when he met a Muslim. It was something he
19 didn't know anything about. He didn't know any Muslims before
20 college, and it was something that was fascinating. 04:21

21 And what happens when you're fascinated with
22 something and you're new to it, which you'll hear from the
23 evidence, is that you focus on it and you obsess on it, and you
24 try to read as much as you can, and you try to study it as much
25 as you can. And if you end up reading and studying and 04:21

1 focussing on certain aspects of it --

2 MS. DEWITT: Objection, Your Honor. Argument.

3 THE COURT: It's argument.

4 MR. THOMAS: I apologize, Your Honor.

5 You're going to hear evidence from the defendant's 04:22
6 family, the CHS, the paid informant, about the kinds of things
7 that Mr. DeLeon and the CHS would listen to. Anwar al-Awlaki
8 is a term you'll hear a lot. The Government introduced it. A
9 radical Al-Qa'ida-sponsored radical Muslim who espouses views
10 that are offensive to most people. 04:22

11 Mr. DeLeon is not on trial for his views. The judge
12 will instruct you on that. Mr. DeLeon is on trial for
13 conspiracies --

14 THE COURT: Avoid argument. You can argue that at
15 the end of the case. But the purpose of opening statement, you 04:22
16 know it.

17 MR. THOMAS: I do.

18 THE COURT: You can discuss what you believe the
19 evidence will show, and nothing else. And that's the last
20 warning. 04:23

21 MR. THOMAS: Thank you, Your Honor.

22 The Government went over some of the elements of some
23 of the charges. One of the most important concepts is this
24 concept of conspiracy. And what is a conspiracy? It's an
25 agreement. It's an agreement between two or more people to 04:23

1 commit a crime. Only the agreement of what you're going to
2 hear --

3 THE COURT: Mr. Thomas, that is argument. Discuss
4 the evidence, not the jury instructions.

5 MR. THOMAS: Okay.

04:23

6 THE COURT: The evidence.

7 MR. THOMAS: One of the focuses on the evidence from
8 the informant is the terms and the conversations that you'll
9 hear him elicit out of these conversations that he starts. And
10 the Government put a bunch of terms up on the screen, things
11 some of the defendants said. But what they didn't put on, and
12 what you'll see and hear in the evidence, is the rest of the
13 conversation and how the informant asks these questions. You
14 know, *Who do you want to be when you fight? Who do you want to*
15 *attack? Who do you want -- what position do you want to be?*
16 *What do you want to use? Where do you want to go? What do you*
17 *want to do?*

04:23

04:24

18 These aren't conversations that the defendants
19 initiated. You'll see from the evidence and the recordings
20 these are conversations the informant initiated.

04:24

21 And that's important because my client was in a
22 completely different part of his life, as you will see, before
23 the informant comes in.

24 When the informant comes in, in February of 2012, he
25 had a few months of observation period with my client. And

04:24

1 what you're going to hear from the Government and what you're
2 going to see from the evidence is that DeLeon was not initially
3 a threat. He was not regarded as a threat. He was regarded as
4 someone who was focused on school, and someone who was a new
5 convert, and someone who they did not think was a threat.

04:25

6 Then what happens is the informant starts paying for
7 trips, paying for meals, giving them cell phones, starting
8 conversations, taking them on trips to Chicago, San Diego, Las
9 Vegas, all kinds of trips where he's recording conversations,
10 and then he starts initiating radical talk only to capture what
11 the defendants are saying.

04:25

12 Now, the reason this is important is because you have
13 to --

14 THE COURT: Okay. That's argument.

15 MR. THOMAS: I apologize, Your Honor.

04:25

16 What I want you to focus on, when the evidence comes
17 in, is who initiated. Who initiated the conversation? Who
18 brought up the term? Who brought up code words? Who brought
19 up where to go? Who brought up the place to go? Who brought
20 up what weapon you use? Who brought up where to use the
21 weapon? Who brought all these terms up?

04:26

22 Another thing to focus on is before my client met the
23 CHS he had never fired a weapon. It was the CHS's and the
24 informant's initiative to take him to a range. It was the
25 informant's initiative, as you'll see, to go play paintball.

04:26

1 All of these things which you'll hear during the evidence were
2 direct results of conversations the CHS and the informant
3 initiates. And I want you to pay careful attention, as you
4 hear this evidence, as to who started what.

5 Now, if you forget everything else I say, remember 04:26
6 this: The Government has told you and charged these defendants
7 with intending to kill Americans. If my client -- and this is
8 something I want you to think of when you're listening to the
9 evidence -- my client's heading overseas --

10 MS. DEWITT: Objection, Your Honor. It misstates the 04:27
11 charges and it misstates the evidence.

12 THE COURT: Sustained. And you're arguing. You are
13 arguing. Refrain from argument.

14 MR. THOMAS: My client -- there's no dispute from
15 either the Government's opening and some of the evidence that 04:27
16 they elicited, including the letters that you'll see from my
17 client that he wrote to his parents, *I'm going overseas*, why
18 was he going overseas? That's something I want you to think
19 about.

20 Now, the focus for Mr. DeLeon when you listen to the 04:27
21 evidence, and the focus that the Government is going to put is
22 on things that --

23 MS. DEWITT: Your Honor, objection.

24 THE COURT: Sustained. Do not argue what the
25 evidence will be. You know the difference, Mr. Thomas. 04:28

1 MR. THOMAS: I do, Your Honor.

2 THE COURT: Do not argue or I'm going to have you sit
3 down.

4 MR. THOMAS: Certainly.

5 What the evidence is going to show, ladies and
6 gentlemen, is that but for the Government and their involvement
7 we wouldn't be here.

04:28

8 THE COURT: Thank you.

9 All right, ladies and gentlemen. Right on time.
10 We'll be in recess, as far as you're concerned, until 9:00
11 tomorrow morning. If you arrive earlier than that, coffee is
12 served for you.

04:29

13 Please remember don't discuss the case with anyone,
14 any members of your family. I've already told you what you can
15 tell your employer or your family members just about the length
16 of the trial or that you've been seated as a juror.

04:29

17 Don't read or listen to any news reports about the
18 case or anything about anyone having anything to do with the
19 case. Don't do any research, chat, blog, tweet, about the case
20 or anyone who has anything to do with it.

04:29

21 We'll see you back tomorrow morning no later than
22 9:00.

23 (Out of the presence of the jury:)

24 THE COURT: We have a couple of matters to take up
25 outside the presence of the jury.

04:30

1 One is the instruction that we've handed out to you
2 that I would be giving, not as I said earlier about the
3 preliminary instructions, or with the preliminary instructions,
4 and not every time there is any evidence about social media or
5 this type of evidence, but at least the first time.

04:31

6 So the parties were going to meet and confer and see
7 if you agreed on any changes to what I have handed out. It's
8 adapted from Model Instruction 211, The Limited Purpose
9 instruction.

10 MR. GRIGG: Thank you, Your Honor.

04:31

11 I did speak briefly with Mr. Thomas by exchanging the
12 version that he had marked up. Mr. Thomas proposed that after
13 the words "purpose of showing" that the Court insert "whether
14 or not" Mr. Kabir or Mr. DeLeon, or both, had intent.

15 The Government has no problem with inserting the
16 "whether or not" language. However, the Government wishes to
17 address some related issues, I think, and bigger picture issues
18 with this instruction, if the Court wouldn't mind.

04:31

19 THE COURT: All right. Go ahead.

20 MR. GRIGG: First of all, I believe that, as we heard
21 from the openings, you're going to be hearing, and the jury is
22 going to hear, a lot about social media from more than
23 Mr. DeLeon and Mr. Santana. So for that reason, the Government
24 would propose replacing, in the first line, the words
25 "Mr. Kabir" or "Mr. DeLeon" or both, with the word "persons."

04:32

04:32

1 Second, with respect to the purpose for which this
2 instruction is being given, as the Court saw in the briefing on
3 this issue and the reference to the beliefs and views and
4 opinions of the defendants, it was the Government's
5 understanding that an instruction about beliefs and views and
6 the potential impact it may have with the jury would be
7 appropriate to the extent that these postings and
8 communications, and so on, reflected the defendants' beliefs
9 and views in the context of religious or political views.

04:32

10 And it was the Government's view that it would be
11 appropriate for the Court to also instruct, aside from the
12 limited purpose aspect that I'll get to in a second, to perhaps
13 add that to an extent that these online activities or
14 communications reflect the defendants' religious beliefs or
15 views, if the Court could add a sentence that instructs about
16 the jury's consideration of their religion and their political
17 beliefs with respect to the First Amendment.

04:33

04:33

18 And that was something that had been --

19 THE COURT: You mean something along the lines of
20 what the Government submitted on that special instruction on
21 what you were referring to as your First Amendment instruction?

04:33

22 MR. GRIGG: That's correct, Your Honor.

23 Now, the reason why I bring that up with respect to
24 this issue is to the extent that there is a perception that
25 their dissemination, for example, between each other and

04:34

1 referring each other to sites where they can obtain religious
2 sermons by Anwar al-Awlaki, I mean, if there is not an issue --
3 if the defense believes there is not an issue with respect to
4 religious beliefs in that type of activity, then the Government
5 would not put forth the suggestion. But our understanding was 04:34
6 that was part of the basis for requesting an instruction. And
7 I believe on the day of the second pretrial conference where we
8 had the debate about whether and when to give such an
9 instruction, I thought that was an issue relating to this
10 aspect of the evidence. 04:34

11 I may be wrong. And if I am, Your Honor, I
12 apologize.

13 The next issue is to the extent that this type of
14 evidence includes the referring by each defendant and
15 co-conspirator to the particular media and their joint liking 04:34
16 and sharing of activities.

17 With respect to the purpose for which the evidence
18 may be used, the Court has said, in the instruction, that the
19 evidence can be considered for whether they had an intent to
20 commit the crimes. And the interrelatedness of the defendants 04:35
21 and their referencing this type of material shows more than
22 just intent; it's evidence of concert of action and the
23 constant nature of the communications, despite the geographic
24 separation that we heard about in opening.

25 So to the extent that, for example, Mr. Kabir is in 04:35

1 Germany or Afghanistan during a particular period of time, and
2 Mr. Santana and Mr. DeLeon and Mr. Gojali are located here in
3 the United States, the fact that they are staying in close
4 contact with each other, not just through email but by
5 commenting and sharing and liking on each other's *Facebook*
6 pages is also something that demonstrates that they are not as,
7 in the Government's view, not as disconnected as the argument
8 suggested.

04:35

9 And so the Government is proposing that the Court
10 reconsider the purpose nature of this instruction and expand it
11 somewhat. And one suggested way to shortcut all that, rather
12 than getting into the details and talking about whether it's
13 also for concert in action, or this or that, is to simply add,
14 after Mr. Thomas' suggestion of showing whether or not
15 Mr. Kabir or Mr. DeLeon, or both, had an intent to commit the
16 crimes, to say, *...showing whether or not an agreement existed*
17 *and whether or not Mr. Kabir and Mr. DeLeon, or both, had an*
18 *intent to commit the charged crimes or to join such an*
19 *agreement.* And that would, I think, cover the other factors
20 that this evidence relates to, as well as the specific intent
21 issue that the Court has addressed in the instruction.

04:36

04:36

04:36

22 And I apologize, Your Honor. I haven't had time to
23 discuss this with counsel in advance, as I had hoped to do.
24 And I understand if this may merit further briefing. It's the
25 Government's expectation that this type of evidence in

04:37

1 particular will not be coming to court before the jury
2 tomorrow, or even Friday.

3 So if the Court wishes, the Government would be happy
4 to try and propose something with counsel, but I'm not sure if
5 the Court wishes to take these issues directly.

04:37

6 THE COURT: As you were speaking, before you made
7 that final suggestion, I do -- depending on what -- I think
8 I've seen most of the -- well, I've seen a lot of documents,
9 but I may not -- I certainly haven't seen everything. To the
10 extent -- I guess there could be things from the *Facebook* pages
11 or emails that the Government might argue. I was going to word
12 it slightly differently to say that, *...could show the making*
13 *of an agreement*, which is pretty close to what you were saying,
14 that it could show -- or this evidence could be considered by
15 the jury to show that an agreement existed.

04:37

04:38

16 But why don't all counsel think about it further. I
17 think the *whether or not*, that addition is fine. But we can
18 discuss it further tomorrow, the proposed changes by Government
19 counsel on these other points.

20 All right. What's the witness lineup for tomorrow?

04:38

21 MS. DEWITT: Same as we provided before, Your Honor,
22 which would be Special Agent Hill, Special Agent Staab, Special
23 Agent Sirko, Special Agent Schyler Beaty, Specialty Agent, if
24 we get that far, Espiritu, and Special Agent Stiff.

25 Along those lines, Your Honor, a lot of the exhibits

04:39

1 that are going to be introduced for these particular witnesses
2 are physical items of evidence that have been seized. I wanted
3 to work out some kind of agreed-upon protocol for handling
4 this. I have a couple of suggestions, and I will just throw
5 them out there.

04:39

6 THE COURT: Who was the first -- oh, Agent Staab.

7 MS. DEWITT: So Hill --

8 THE COURT: Hill, Staab.

9 MS. DEWITT: Hill, Staab, Sirko.

10 THE COURT: Okay. I think I got them all, then. I
11 think Staab was the only one I --

04:40

12 Ms. Viramontes: Your Honor, if I may?

13 I'm sorry. I didn't hear the Government who they
14 were calling after Sirko.

15 THE COURT: Stiff, Staab, Sirko, Hill, Schyler Beaty,
16 and Espiritu. Is that everyone?

04:40

17 Ms. Viramontes: Is that the order that the
18 Government will be calling them in so we can have our exhibits
19 prepped?

20 MS. DEWITT: Yes.

04:40

21 THE COURT: Do I have the order right?

22 MS. DEWITT: That's what I assumed she was asking me.
23 Yes, that is the order.

24 Ms. Viramontes: Thank you.

25 THE COURT: That was a coincidence that I got the

04:40

1 order right.

2 All right. So what are the physical items of
3 evidence?

4 MS. DEWITT: So Your Honor, there's a couple of
5 things. The physical items of evidence are fairly, some of 04:40
6 them are fairly bulky. There are also -- these are the
7 original items of evidence, so I'm guessing that the Court --
8 there is a couple things. I'm guessing that the Court doesn't
9 want to retain custody, then, at the end of the day?

10 THE COURT: Correct. 04:41

11 MS. DEWITT: We do have a room in the courthouse that
12 counsel has seen -- defense counsel has seen; that it would be
13 my expectation that we would take custody back of the items.

14 THE COURT: The agents take custody of them.

15 MS. DEWITT: The agents take custody and leave them 04:41
16 in that part of the courthouse that is locked. The actual room
17 inside is not locked, but it is within multiple locked doors.

18 Obviously, at the end of the trial we would all sit
19 down and agree that these are the same things that were moved
20 into evidence, and go through them and make sure we have 04:41
21 everything on the list.

22 The other thing is that --

23 THE COURT: And so if -- let me just make sure I
24 understand what you're talking about.

25 Are you talking primarily about the items that were 04:41

1 seized at the time of the arrests?

2 MS. DEWITT: That's correct.

3 THE COURT: And so if Government counsel -- I'm
4 sorry.

5 If defense counsel wants to use any of those on 04:41
6 another day during the trial --

7 MS. DEWITT: They just have to let us know and we'll
8 bring them in. And they're going to be within --

9 THE COURT: A few minutes.

10 MS. DEWITT: -- fairly close. 04:42

11 But I would also suggest, Your Honor, because I think
12 this might make it easier for your court staff, is to have the
13 agents be responsible for actually taking those items of
14 evidence to the witness. Some of them are computers. And what
15 I've done in the past, and I don't know whether this is 04:42
16 acceptable to the Court, but I've actually had them just take a
17 cart like that and put those items of evidence -- because there
18 is going to be multiple seriatim, and sit someplace near the
19 witness so they can just hand them directly to the witness.

20 THE COURT: That's fine. In fact, that's our usual 04:42
21 practice is to have the agents do that. The cart -- you can
22 play around with it tonight, but you can probably put it right
23 behind that wall.

24 MS. DEWITT: Exactly.

25 THE COURT: We don't want to block -- that might 04:42

1 block the jury's entrance and exit. And the witnesses that
2 you're calling tomorrow, none of them are in custody, so we
3 don't need that chair there. So we could move the chair and --

4 MS. DEWITT: They're not in custody yet, but by the
5 end of the day they might be.

04:43

6 THE COURT: You never know in my courtroom.

7 You can put the -- I know that's what you were
8 insinuating. So you can move the chair and put the cart there.

9 MS. DEWITT: Thank you, Your Honor.

10 THE COURT: Any other housekeeping matters from the
11 Government?

04:43

12 MR. GRIGG: Your Honor, I believe, just so that the
13 Court and counsel have the exact correct order, because I
14 believe when we were having the back and forth about the names
15 some of them got transposed. The order should be Hill, Staab,
16 Sirko, Espiritu -- sorry. Excuse me. Hill, Staab, Sirko,
17 Beaty, Espiritu, and then Stiff. One through six, in that
18 order.

04:43

19 THE COURT: Did you get that?

20 MS. VIRAMONTES: Yes. Thank you.

04:43

21 THE COURT: Any housekeeping matters for the defense?

22 MR. AARON: No, Your Honor.

23 MR. THOMAS: No, Your Honor.

24 MR. CHIU: One moment, Your Honor.

25 MR. GRIGG: Your Honor, in light of opening

04:44

1 statements from counsel for Mr. DeLeon, it's the Government's
2 intent to proceed to introduce Mr. DeLeon's proffer statement
3 and admissions to the agents because among the many things that
4 counsel said today was that the entire matter was initiated by
5 the CHS, and Mr. DeLeon had no intent, and so on, and none of 04:44
6 these things were of his doing. And as the Court knows from
7 extensive briefing on this issue and from having heard
8 testimony on this issue, that is exactly opposite of what
9 Mr. DeLeon admitted to the FBI during his proffer.

10 And we just want to raise that issue for the Court 04:44
11 that will be something that we propose to present to the jury.

12 THE COURT: All right. Well, I'm going to look at
13 the opening. That is my recollection, that Mr. DeLeon's
14 counsel said that with respect to the informant's role, but I
15 will look at the exact wording of that tonight. 04:45

16 The other concern I have, and this is as to
17 Mr. DeLeon's -- or the opening statement on behalf of
18 Mr. DeLeon. I excluded testimony from Dr. Sageman, so there
19 was extensive reference to the diagnosis of epilepsy. And if
20 Dr. Sageman isn't testifying, a layperson can't testify to that 04:45
21 effect.

22 MR. THOMAS: Your Honor, that was Kabir, and that
23 was --

24 THE COURT: I meant Kabir. I'm sorry. I meant
25 Kabir. 04:45

1 MR. AARON: That's correct. It was Dr. Victoroff.

2 THE COURT: Dr. Victoroff. I'm sorry. Wrong
3 witness; wrong defendant.

4 MR. AARON: But every -- each of the family members
5 of Mr. Kabir, as well as Mr. Kabir, are well aware of his
6 condition. 04:46

7 THE COURT: They can't testify as to a medical
8 condition, the diagnosis; it would be hearsay. And they are
9 not qualified to testify independently unless -- I mean, they
10 wouldn't be qualified to testify as to his condition, and they 04:46
11 can't testify to the diagnosis because it would be hearsay.

12 MR. AARON: Well, they can certainly testify to the
13 fact of seizures which they've seen.

14 THE COURT: What I'm pointing out is there was
15 extensive reference, I thought, in that opening statement to 04:46
16 items of evidence that are not -- that I previously ruled are
17 not admissible or relevant and that are not going to come in,
18 according to my prior rulings. And that's a risk that if
19 counsel want to take it, any -- that's fair game at closing for
20 opposing counsel to point out that promises were made during 04:47
21 the opening that weren't kept.

22 And what I don't want to see happen is -- well, the
23 openings have been given. But I've never heard so much
24 reference, in an opening statement, to items of evidence that I
25 have previously ruled were not going to be admitted. And so 04:47

1 what I don't want to see happen at the end of the trial, for
2 counsel for Mr. Kabir to say, *But we said we were going to do*
3 *it in our* -- well, either at the end of trial or during the
4 trial to say, *But we told the jury we were going to put this*
5 *in, so you have to let us put it in.*

04:47

6 I've already ruled on it. And, you know, I think
7 it's a very dangerous thing to do, to hope that I'm going to
8 change my ruling, or that I'm going to somehow tell the
9 Government that they can't argue about the fact that
10 representations were made about evidence that never is going to
11 be admitted.

04:48

12 All right. Anything else we need to take up tonight?

13 MR. AARON: Your Honor, I just wanted to remind the
14 Court that we had objected to Mr. DeLeon's proffer to
15 statements from a possibly or probably non-testifying witness
16 being admitted against our client. And we would reassert all
17 of those objections. We don't believe that statement should
18 come in against Mr. Kabir at all, and the jury should be so
19 instructed.

04:48

20 THE COURT: All right. When you say "non-testifying
21 witness," you're referring to Mr. DeLeon?

04:48

22 MR. AARON: Correct.

23 THE COURT: All right. Thank you.

24 No reference should be made to that proffer statement
25 until I've made a ruling on it. And you're not intending to do

04:48

1 that in the next --

2 MR. GRIGG: Not this week.

3 THE COURT: Not this week. All right. So we'll hear
4 further about that.

5 MR. GRIGG: Thank you, Your Honor.

04:49

6 (Proceedings Adjourned)

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C E R T I F I C A T E

DOCKET NO. EDCR 12-92(B) VAP

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and accurate transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/S/ Phyllis A. Preston

DATED: August 14, 2014

Federal Official Court Reporter

CSR, FCRR

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